

## A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS

# Employment After Retirement

Teachers' Pension and Annuity Fund

As people are retiring at an earlier age and living longer after retirement, the question of how employment after retirement will affect pension benefits is becoming more important. This fact sheet provides information a Teachers' Pension and Annuity Fund (TPAF) retiree should consider when deciding on returning to the work force in either a full- or part-time capacity.

Working for private industry, the federal government, or a government agency in another state will not normally affect your TPAF retirement benefits. (See the Disability Retiree section on page 3 for exceptions to this.) Returning to public employment in New Jersey after retirement, however, could affect your benefits as shown in the following information. Your prospective employer should be able to tell you if the employment you are considering is covered by the TPAF.

## TPAF RETIREE RETURNING TO WORK IN A TPAF COVERED POSITION

### TPAF Membership Continued

When you return to TPAF covered employment is critical in determining your TPAF status. You should expect to continue enrollment in the TPAF if you start working in a TPAF covered position before your pension has become due and payable. A pension benefit is due and payable 30 days after the date of Board approval, or the retirement date, whichever is later. You must have at least a 30-day break in service after your retirement date to be considered retired from the TPAF. If you return to TPAF covered employment within 30 days of your retirement date, your retirement is not valid, and you are considered an active employee.

### TPAF Enrollment Required

If you accept regular full or part-time employment in a position covered by the TPAF, you must reenroll in the pension fund. Your retirement allowance will be suspended for the duration of your employment. The procedure for enrollment in the TPAF after retirement is covered later in this publication.

Membership in the TPAF is required as a condition of employment if:

- You are appointed to a teaching or profes-

sional staff position requiring certification and the position is covered by Social Security; and

- Your annual salary is \$500 or more.

Generally, non-certified professional personnel are not eligible for TPAF membership. Neither are seasonal or substitute teachers employed on a temporary basis. All other teachers whose positions require certification are required to participate in the TPAF even if paid on an hourly or per diem basis.

### TPAF Enrollment Not Permitted

You cannot reenroll in the TPAF if you are employed:

- As a per diem substitute;
- As a permanent or long-term substitute;
- As a replacement for a regular employee on approved leave of absence (provided the regular employee is not on terminal leave).

### Certificated Superintendent or Certificated Administrator

Chapter 355, P.L. 2001 (N.J.S.A. 18A:66 - 53.2) provides an exemption from the reenrollment after retirement provisions to retirees of the TPAF who are certificated superintendents or certificated administrators (this does not apply to those retired on a disability retirement — see page 3). Positions which require certificated administrators include that of superintendent, assistant superintendent, executive superintendent, principal, assistant principal, vice-principal, director, supervisor, and school business administrator. For a complete list of certificated administrator positions, please contact the New Jersey Department of Education.

A certificated superintendent or certificated administrator who becomes employed by the New Jersey Department of Education in a position of critical need as determined by the Commissioner of Education is exempt from the reenrollment provisions.

A certificated superintendent or certificated administrator who becomes employed by a board of education as a certificated superintendent or certificated administrator on a contractual basis for a term of not more than one year, is exempt from the reenrollment provisions. The contract for employment can be renewed for one additional year; however, the

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retiree's total period of employment with any individual board of education may not exceed a two-year period.

Chapter 355 also provides that the current pension reenrollment provisions will still apply **if a retiree accepts employment within 120 days of retirement** with the same employer from which the retiree retired.

### **Interim Positions**

Prior to November 3, 2003, provisions existed in the Administrative Code that permitted school boards to appoint retired TPAF members to TPAF-covered positions on an interim basis for up to six months without affecting their retirement benefits. The TPAF Board of Trustees repealed that rule so interim appointments can no longer be made, except in the case of superintendents and certificated administrators, as described above. If the retired TPAF members return to TPAF-covered employment, they must cancel their retirements and re-enroll in the system as active employees.

### **EFFECT ON RETIREMENT BENEFITS IF REEMPLOYED IN A TPAF ELIGIBLE POSITION**

Unless otherwise stated above, you must reenroll in the TPAF as a condition of your employment if you are collecting retirement benefits, other than disability retirement benefits, from the TPAF, and you accept employment in a position covered by the TPAF. Your retirement allowance will be suspended for the duration of your employment, and you become an active contributing member again. (If you are over age 60, you must prove insurability for life insurance coverage.) If you die while in the second membership, no benefits from the previous membership or retirement are payable, other than the return of your contributions not used to pay your retirement allowance. This means that retirement option settlements and death benefits (insurance) from the suspended retirement would not be paid to your beneficiaries.

If you return to employment under the TPAF and are eligible for membership but you fail to enroll, you would be required to reimburse the retirement system in the amount of all retirement benefits you received since the date you should have enrolled. In addition, you would be required to pay pension contributions in the form of back deductions back to your enrollment date. There is no limitation on the amount of reimbursement that may be recovered by the

retirement system in these situations.

The following steps should occur when you are reemployed in a TPAF position and reenrolled:

1. Your employer must submit a TPAF enrollment application on your behalf to the Division of Pensions and Benefits.
2. Your application will be referred to the Board of Trustees of the retirement system to suspend your retirement allowance as of the date you are required to enroll in the TPAF. The date of enrollment is not negotiable. The TPAF Board Secretary will advise you of the action taken by the Board.
3. Once the Board of Trustees suspends your retirement allowance, your enrollment application will be processed and a certification to deduct pension contributions will be sent to your employer. This certification will also include instructions to collect any back deductions, if appropriate.
4. You will be billed for any retirement payments you received after the effective date of your new TPAF enrollment. Because of the sequence of events, most retirees are enrolled in the TPAF on a retroactive basis. You should therefore anticipate that you will be required to refund one or more pension checks to the retirement system.
5. You must file an application for retirement on or before the effective date of your second retirement. Your former retirement allowance and any option selection will be restored along with any appropriate cost-of-living adjustment due based upon your original date of retirement. In addition, you will receive a retirement allowance based upon your new period of service. These two calculations are paid in one retirement check.

You cannot combine your first and second account to qualify for a Veteran Retirement. Service credit from both retirements may be combined to satisfy the 25 years of service requirement for TPAF paid State Health Benefits Program coverage. In order to be eligible for this coverage, you must be eligible for employer-paid SHBP or local employer coverage from your last employment in the TPAF.

**Note:** Any additional allowance due as a result of the second period of service will be determined under the Service Retirement formula; a reduction applies if the retiree is under age 55. By law, the combined

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retirement allowances cannot be greater than the allowance you would have received if your first retirement had not occurred.

**RETURNING TO WORK IN A POSITION COVERED BY A DIFFERENT NEW JERSEY STATE-ADMINISTERED RETIREMENT SYSTEM**

In this case, your retirement allowance continues and you can receive salary but you cannot become a member of that retirement system.

**DISABILITY RETIREES RESTORED TO ACTIVE SERVICE IN THE TPAF**

If you are a disability retiree, before you can return to active service in a TPAF eligible title you must:

1. Make a written request to return to active service to the Division of Pensions and Benefits.
2. Submit a physician's report to the Division certifying that you are no longer disabled and can return to employment. The physician should be one with the same specialty as the physician who originally certified that you were disabled.
3. Be examined by a physician appointed by the TPAF Board of Trustees.
4. Be approved for return to active service by the TPAF Board of Trustees.

When you return to active service and earn an annual salary of \$500 or more, you must enroll again in the pension fund. Deductions for pension are resumed and you are treated as an active employee in all respects. Upon subsequent retirement, you will receive a benefit based on total service.

**DISABILITY RETIREES — EARNINGS AFTER RETIREMENT**

A disability retirement allowance may be adjusted if you have earnings from any occupation after retirement. If your pension, when added to the earnings from other employment, exceeds what your former position currently pays, the law states that the disability pension shall be reduced dollar for dollar by the excess earnings above what the former position currently pays. TPAF disability retirees are subject to an annual earnings test and the Division of Pensions and Benefits may request copies of your federal tax returns and Form W-2

**OTHER CONSIDERATIONS**

**State Health Benefits**

**Program Retired Group Coverage**

Returning to public employment in New Jersey may affect your eligibility to continue coverage under the State Health Benefits Program (SHBP). If your retirement allowance is suspended because you return to work in a position covered by the TPAF, your retired group SHBP coverage is also suspended.

Returning to a position not covered by the TPAF will not affect your eligibility for retired group coverage under the SHBP. Maintaining SHBP retired group coverage also does not affect your eligibility for active group health coverage associated with your new employment.

**Social Security Benefits**

There is an earnings test for people under age 65 receiving Social Security benefits. Check with the Social Security Administration at 1-800-772-1213 for information on earnings limits before accepting employment after retirement.

**SELF EMPLOYMENT ISSUES**

The Division of Pensions and Benefits is frequently approached by TPAF retirees who seek recognition as independent contractors rather than employees. These retirees want to resume work similar to that performed while they were public employees without affecting their eligibility to receive TPAF retirement benefits. While it is the public agency's responsibility to correctly classify the worker's employer-employee relationship, our experience indicates that workers are frequently incorrectly identified as independent contractors when they are, in fact, employees of the agency.

As a rule, the Division of Pensions and Benefits accepts the tests and standards used by the Internal Revenue Service and the NJ Department of Labor and Workforce Development, Division of Employer Accounts, to determine the employer-employee relationship. Since penalties levied by the IRS can be severe, both the worker and the employer should give careful consideration before classifying a worker as an independent contractor. In addition to IRS penalties and any penalties imposed by the NJ Department of Labor and Workforce Development in the event that an employee has been incorrectly classified as an independent contractor, there are penalties relating to the TPAF. The employer will be

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assessed delinquent enrollment charges for failing to enroll an employee in the retirement system in a timely fashion. The employee will be required to refund all retirement benefits received after the date enrollment should have occurred. The employee must also pay any retroactive pension contributions due on the new TPAF account.

The IRS test to assess the employer-employee relationship includes the following factors:

- Degree of control
- Right to discharge
- Right to delegate work
- Right to hire and fire assistants
- Payment by the hour
- Furnishing of training
- Skill
- Duration of relationship
- Control over hours of work
- Independent trade
- Furnishing tools
- Place of work
- Profit and loss
- Intent of the parties
- Principal in business
- Sequence of work
- Reports required
- Same work as others classified as employees
- Integration
- Industry custom

While none of the factors are controlling and response to all must be weighed together, under the

common law definition of "employment," one of the most important factors for consideration is whether the employer has the right to instruct and control the employee in respect to the details of the work that is performed by the employee.

For additional clarification on the independent contractor issue, contact the NJ Department of Labor and Workforce Development, Division of Employer Accounts at (609) 292-2321.

### **SPECIAL NOTICE FOR RETIREES IF REENROLLED TO A TPAF COVERED POSITION**

**If you are reenrolled in the TPAF after retirement, you are treated as an active member in all respects. Your retirement allowance is suspended as a result of a return to TPAF covered employment and no retirement or insurance benefits associated with your former retirement will be paid to your beneficiary should you die during your second membership. If you are over the age of 60 when you reenroll, you will be required to prove insurability through physical examination before you will be covered by the group life insurance benefits of active members. Once you retire again, the death benefits associated with your first retirement become effective.**

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